

## LEXSTAT DELAWARE LAW OF CORPORATIONS &amp; BUSINESS ORGANIZATIONS SEC. 20.4

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Chapter 20 Delaware Limited Liability Companies

*Delaware Law Of Corporations & Business Organizations Sec. 20.4*

Sec. 20.4 FREEDOM OF CONTRACT

**TEXT:** Freedom of contract is a fundamental principle underlying the Act, just as it underlies the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101 et seq.). The Act's basic approach is to permit members to have the broadest possible discretion in drafting their limited liability company agreement and to furnish answers only in situations in which the members have not made provision in their limited liability company agreement. Many of the Act's most fundamental provisions are expressly made subject to modification in a limited liability company agreement. *See, e.g.*, §§ 18-107, 18-204(b), 18-209(b), 18-213(b) and (d), 18-216, 18-301(d), 18-302(d), 18-304(a) and (b), 18-402, 18-403, 18-404(d), 18-502(a) and (b), 18-503, 18-504, 18-605, 18-606, 18-702(a), (b), (c) and (d), 18-703(c), 18-704(b), 18-801(a)(4) and (b), 18-803(a), and 18-804(a)(2) and (3), each using language establishing contractual flexibility, such as "unless otherwise provided in a limited liability company agreement." Thus, for example, members of a Delaware LLC are free to contract among themselves concerning the management of the Delaware LLC, including who is to manage the entity, the establishment of classes of members, voting, procedures for holding meetings of members or considering matters without a meeting.

Once members exercise their contractual freedom in their limited liability company agreement, they can be virtually certain that the agreement will be enforced in accordance with its terms. The policy of the Act, which is expressly stated in Section 18-1101(b), is to give maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements. Thus, the Act gives members virtually unfettered discretion to define contractually their business understanding, and then provides assurance that their understanding will be enforced in accordance with the terms of their limited liability company agreement.

Not only is the foregoing the case with respect to the management of a Delaware LLC, it is also the case with respect to the financial aspects of a Delaware LLC. Allocation of profits and losses and the distribution of assets may be made in the manner provided for in the limited liability company agreement. The Act's rules for allocating profits and losses and distributions of assets will apply only when members do not deal with such matters in their limited liability company agreement.